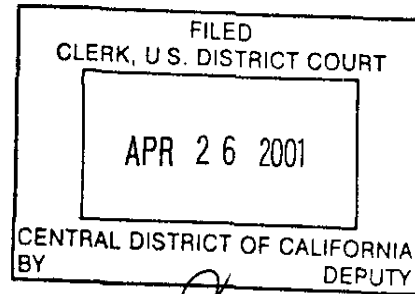
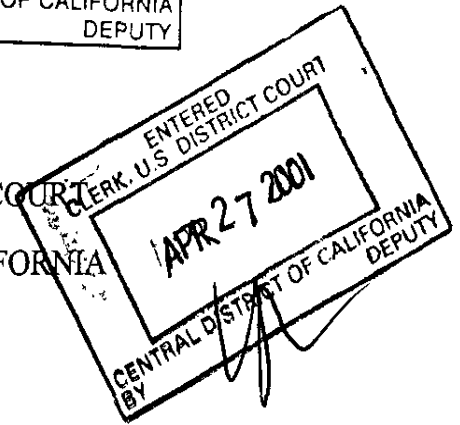


1      Priority      ☒  
 2      and      ☒  
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 5      ~~JS-6~~      ☒  
 6      JS-2/JS-3      ☒  
 7      Scan Only      ☒



8                                      UNITED STATES DISTRICT COURT  
 9                                      CENTRAL DISTRICT OF CALIFORNIA  
 10                                      WESTERN DIVISION



12      UNITED STATES OF AMERICA, *ex rel.*  
 13      PEGGY FOSTER and PEGGY FOSTER,

14                                      Plaintiffs

15                                      vs.

16      THE PARSONS CORPORATION, PARSONS  
 17      INFRASTRUCTURES & TECHNOLOGY  
 18      GROUP, INC., THE RALPH M. PARSONS  
 19      COMPANY (INC.), PARSONS  
 20      ENGINEERING SCIENCE, INC. fka  
 21      PARSONS ENGINEERING-SCIENCE, INC.,  
 22      PARSONS ENVIRONMENTAL SERVICES,  
 23      INC., PARSONS MAIN, INC., PARSONS  
 24      S.I.P., INC., PARSONS DEVELOPMENT  
 25      COMPANY, PARSONS INTERNATIONAL,  
 26      INC., BARTON-ASCHMAN ASSOCIATES,  
 27      INC., DE LEUW CATHER & CO., INC.,  
 28      GILBERT/COMMONWEALTH, INC. fka  
 29      GILBERT ASSOCIATES, INC., PARSONS  
 30      HARLAND BARTHOLOMEW &  
 31      ASSOCIATES, INC. fka HARLAND  
 32      BARTHOLOMEW & ASSOCIATES, INC.,  
 33      AUS-MAIN CLEAN AIR TECHNOLOGIES,

34                                      Defendants

35      No. CV 96-3675 CBM (SHx)

36      **ORDER** Dismissing Plaintiff's Remaining  
 37      Claims Without Prejudice

38      [Plaintiff's Motion filed March 19, 2001;  
 39      Defendants Cross-Motion filed March 26,  
 40      2001]

41                                      Docketed      ☒  
 42                                      Copies / NTC Sent      ☒  
 43                                      JS - 5 / JS - 6      ☒  
 44                                      JS - 2 / JS - 3      ☒  
 45                                      CSD      ☒

46                                      The matters before the Court, the Honorable Consuelo B. Marshall, United States District  
 47      Judge presiding, are (1) Plaintiff's Fed. R. Civ. P. 41(a)(2) Motion to Dismiss Without Prejudice and

48                                      APR 27 2001

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(2) Defendants' Cross-Motion to Dismiss with Prejudice. Upon consideration of the papers submitted, the Court grants Plaintiff's Motion to Dismiss Without Prejudice and denies Defendants' Cross-Motion to Dismiss with Prejudice as moot.

### JURISDICTION

This action is before the Court pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3729.

### BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Peggy Foster filed this action on behalf of herself and the United States on May 22, 1996. Plaintiff asserted claims against her former employer, The Parsons Corporation, and several of its affiliated companies, for (1) violation of the Federal Claims Act; (2) wrongful discharge under the Federal Claims Act; (3) wrongful discharge under state law; (4) breach of implied-in-fact employment contract; and (5) breach of implied covenant of good faith and fair dealing.

The Court dismissed Plaintiff's Third, Fourth and Fifth Causes of Action without prejudice to filing such claims in state court on February 17, 2000.<sup>1</sup> *See* Order entered February 18, 2000. Plaintiff's First claim was dismissed without prejudice for failure to plead fraud with particularity. *Id.* Plaintiff re-filed her First claim. The Court dismissed portions of Plaintiff's First claim on August 31, 2000, with prejudice. *See* Order dated August 31, 2000. Plaintiff's Second claim and portions of her First claim remain in this action.

Plaintiff filed a Motion for Voluntary Dismissal Without Prejudice on March 19, 2001. Defendant filed an Opposition to Plaintiff's Motion to Dismiss and a Cross-Motion to Dismiss with Prejudice on March 26, 2001.

### DISCUSSION

Plaintiff seeks the dismissal of "all claims" in this action without prejudice. Plaintiff's Motion at 1. Defendant does not oppose Plaintiff's Motion to Dismiss without prejudice -- except to the extent the Court has already dismissed certain claims with prejudice in its August 31, 2001 Order. Defendant argues, in the alternative, if the Court decides to dismiss "all claims" with

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<sup>1</sup>Plaintiff re-filed her Third, Fourth and Fifth claims in state court in Utah. *See* Plaintiff's Motion, Ex. A.

1 prejudice, the Court should condition such dismissal on an award of attorney's fees to Defendant.

2 Plaintiff must obtain court approval to dismiss pursuant to Fed. R. Civ. P. 41(a)(2) after  
3 service of an answer or summary judgment motion. Rule 41(a)(2) states, in relevant part, that "[t]he  
4 action shall not be dismissed at the plaintiff's instances save upon the order of the court and upon  
5 such terms and conditions as the court deems proper." FED. R. CIV. P. 41(a)(2). The court considers  
6 three issues when exercising its discretion to dismiss the action: (1) whether to allow dismissal at  
7 all; (2) whether the dismissal should be with or without prejudice; and (3) what terms and conditions,  
8 if any, should be imposed. *Spencer v. Moore Business Forms, Inc.*, 87 F.R.D. 118, 119 (N.D. Cal.  
9 1980). Courts generally allow dismissal unless defendant will suffer "some plain legal prejudice."  
10 *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). Legal prejudice is  
11 "prejudice to some legal interest, some legal claim, some legal argument." *Westlands Water District*  
12 *v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). A defendant may suffer legal prejudice by a  
13 dismissal without prejudice with respect to claims previously dismissed with prejudice. *Spencer*,  
14 87 F.R.D. at 119.

15 Portions of Plaintiff's First claim under the Federal Claims Act -- i.e., all claims except those  
16 based on government contracts No. DAAA15-90-D-0003 ("Dugway Project") and No. UT950001  
17 ("Hill Air Force Base") -- were dismissed with prejudice in the Court's August 31, 2000 Order.  
18 Permitting Plaintiff to "dismiss" these claims without prejudice would result in legal prejudice to  
19 Defendant. Defendant does not object to dismissing the Plaintiff's remaining claims -- namely, her  
20 Second claim and the remainder of Plaintiff's First claim -- without prejudice.

## 21 CONCLUSION

22 Based on the foregoing, the Court **GRANTS** Plaintiff's Motion to Dismiss Plaintiff's  
23 remaining claims without prejudice. The Court **DENIES** Defendant's Cross-Motion to Dismiss with  
24 Prejudice as moot.

25  
26 **SO ORDERED.**

27 **DATE:** April 26, 2001

28   
**CONSUELO B. MARSHALL**  
**UNITED STATES DISTRICT JUDGE**